

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

Ken B. Peterson, Commissioner,
v.
Llamas Quality Services, LLC,
Respondent.

**FINDINGS OF FACT,
CONCLUSIONS AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to a Motion for Default Judgment, filed by the Commissioner on March 22, 2012.

Llamas Quality Services, LLC, Respondent, failed to file a response to the Motion.

Appearances: Rory H. Foley, Assistant Attorney General, on behalf of Ken B. Peterson, Commissioner. Llamas Quality Services, LLC, failed to file an appearance or otherwise appear.

STATEMENT OF THE ISSUES

Should the penalties imposed on Respondent for occupational health and safety (OSHA) citations issued following an inspection on September 8, 2011, be affirmed?

Based on the evidence in the hearing record, the Administrative Law Judge concludes that the Respondent is in default and the penalties imposed are affirmed.

FINDINGS OF FACT

1. The Commissioner is responsible for enforcement of OSHA regulations in Minnesota. Respondent is an employer engaged in the business of construction.

2. On September 8, 2011, the Commissioner conducted an OSHA inspection of the Respondent and on September 29, 2011, issued a citation and notification of penalties for OSHA violations.¹ It included Citation 01, Item 001, violation of Minn. Stat. § 182.653, subd. 8,² with a penalty of \$350.00; Citation 01, Item 002, violation of 29

¹ Affidavit of Assistant Attorney General Rory H. Foley (Foley Affidavit) at ¶ 2.

² Minnesota Statutes are cited to the 2010 Edition.

C.F.R. § 1926.501(b)(1), with a penalty of \$1,925.00; and Citation 01, Item 003, violation of 29 C.F.R. § 1926.501 (b)(11), with a penalty of \$2,450.00.³

3. On October 21, 2011, Respondent filed a Notice of Contest with the Commissioner.⁴

4. On January 19, 2012, the Minnesota OSHA Division of the Department of Labor and Industry served a Summons and Complaint upon Respondent seeking recovery of the penalties for the citations previously issued.⁵

5. The Summons and Notice to Respondent and the cover letter sent to Respondent stated that a written Answer must be filed with the Department within 20 days following service of the Summons and Complaint. They also stated that failure to file an Answer may constitute waiver of the right to further participate in the proceedings and could result in dismissal of the Notice of Contest.⁶

6. Minn. R. 5210.0570, subpart 1,⁷ requires that the Respondent file an answer within 20 days, and if the Respondent fails to do so, subpart 4 states that any allegation not denied is deemed admitted and any affirmative defense not asserted is deemed waived.

7. The Respondent failed to file an Answer.⁸

8. On March 21, 2012, the Commissioner filed a Notice of Motion and Motion for Default Judgment on the Respondent. It included notice that, to contest the Motion, Respondent must file a written response with the judge within ten working days of the date the motion was received.

9. The Respondent failed to file a response to the Motion.

10. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Complaint are taken as true and incorporated by reference into these Findings of Fact.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

³ Complaint, Exhibit. A.

⁴ Foley Affidavit, ¶ 3.

⁵ Foley Affidavit, ¶ 4.

⁶ See Summons and Notice to Respondent and letter to Respondent from William A. Bierman, Jr., dated January 18, 2012.

⁷ Minnesota Rules are cited to the 2011 Edition.

⁸ Foley Affidavit, ¶ 5.

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry are authorized to consider the charges against Respondent under Minn. Stat. §§ 188.661 and 14.50.

2. The Respondent received due, proper and timely notice of the charges against it, and of opportunity to respond to the Motion. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Commissioner has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations and the issues set out in Summons and Complaint or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of its failure, without the ALJ's prior consent, to respond to the Notice of Motion and Motion.

6. Any Findings of Fact more properly designated as Conclusions are hereby adopted as such.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum incorporated herein, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED THAT the penalties imposed on Respondent for OSHA citations issued following an inspection on September 8, 2011, be AFFIRMED.

Dated: April 19, 2012

s/Beverly Jones Heydinger

Beverly Jones Heydinger
Administrative Law Judge

Not Reported: Default

NOTICE

Under Minn. Stat. §§ 182.661, subd. 3, and 182.664, subd. 5, this decision is the final order, subject to appeal to the Minnesota Occupational Safety and Health Review Board by the employer, employee, their authorized representative, or any party, within

30 days following the service by mail of this decision. The procedures for appeal are set out at Minn. R. 5215.5000 *et seq.*